

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LATARRA OLLIE, *et al.*,

Plaintiffs,

v.

WAYPOINT HOMES, INC.,

Defendant.

Case No.: 14-CV-1996 YGR

**ORDER DENYING IN PART DEFENDANT’S
MOTION TO DISMISS; PROVIDING PLAINTIFF
AN OPPORTUNITY TO AMEND**

Now before the Court is Defendant Waypoint Homes’ Motion to Dismiss the complaint of Plaintiff Latarra Ollie, in which Plaintiff alleges that Defendant violated the Equal Credit Opportunity Act (“ECOA”) by failing to comply with the procedural protections due applicants in credit transactions.¹

A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of the claims alleged in the complaint. *Ileto v. Glock, Inc.*, 349 F.3d 1191, 1199–1200 (9th Cir. 2003). “Dismissal can be based on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory.” *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). All allegations of material fact are taken as true and construed in the light most favorable to the plaintiff. *Johnson v. Lucent Techs., Inc.*, 653 F.3d 1000, 1010 (9th Cir. 2011). To survive a motion to dismiss, “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to

¹ Pursuant to Federal Rule of Civil Procedure 78(b) and Civil Local Rule 7-1(b), the Court finds this motion suitable for resolution without oral argument. Accordingly, the Court **VACATES** the hearing set for September 16, 2014.

1 relief that is plausible on its face.’ ” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl.*
2 *Corp. v. Twombly*, 550 U.S. 544, 557 (2007)).

3 The core of the motion turns on the parties’ dispute over whether the transaction at issue
4 here, as alleged in the complaint, constitutes a “credit transaction” that falls under the ECOA. The
5 Court concludes that Plaintiff has met her burden in this regard at this juncture. *See Brothers v.*
6 *First Leasing*, 724 F.2d 789 (9th Cir. 1984). Moreover, on the face of Defendant’s own letter, it
7 appears that Defendant concedes independently that its actions against Plaintiff qualify as “credit
8 transactions” and that it is therefore obligated to comply with the ECOA. (Letter of Denial from
9 Defendant to Plaintiff, Exhibit A to Complaint, Dkt. No. 4.)

10 Second, Defendant disputes whether Plaintiff has alleged adequately that harm resulted
11 from Defendant’s failure to comply with its obligations under the ECOA. The Court finds that she
12 has. Damages stemming from an ECOA violation may include out-of-pocket monetary losses,
13 injury to credit reputation, and mental anguish, humiliation or embarrassment. *Anderson v. United*
14 *Finance Co.*, 666 F.2d 1274, 1277 (9th Cir. 1982.) Plaintiff alleges that she was injured in the form
15 of humiliation and embarrassment by the deprivation of information relating to her denied
16 application for a residential lease upon Defendants’ running of a credit report. The Court finds
17 Plaintiff’s allegation plausible and related to Defendant’s failure to comply with the ECOA.

18 Third, Defendant disputes whether Plaintiff is entitled to request punitive damages for
19 violations of the ECOA. She is. 15 U.S.C. § 1691e(b). For a violation of the ECOA, a plaintiff
20 may be entitled to actual, compensatory and punitive damages, along with equitable relief and
21 recovery for costs and attorney fees. *Id.* Punitive damages are not compulsory; an aggrieved party
22 may be entitled to punitive damages “pursuant to section 1691e(b) if (1) the creditor wantonly,
23 maliciously or oppressively discriminates against an applicant, or (2) the creditor acts in reckless
24 disregard of the requirements of the law, even though there was no specific intention to
25 discriminate on unlawful grounds.” *Anderson*, 666 F.2d at 1278 (internal quotations omitted).
26 Here, Plaintiff has alleged that even though Defendant holds itself out as beholden to the ECOA, it
27 nonetheless disregards the procedural protections due to applicants thereunder as a matter,
28 seemingly, of course. Defendant argues the facts differ and that Defendant did not meet the

1 standard for punitive damages (*see* Reply at 6-7), but that question is not suitable for resolution on
2 a motion to dismiss. Plaintiff has sufficiently alleged that Defendant's conduct raises a plausible
3 claim for punitive damages under the statute.


4 Fourth, Defendant argues that Plaintiff has not stated a claim for injunctive relief because
5 she has not showed a threat of being harmed again by Defendant's allegedly unlawful conduct. The
6 Court finds this argument persuasive. An "[e]quitable remedy is unavailable absent a showing of
7 irreparable injury, a requirement that cannot be met where there is no showing of *any real or*
8 *immediate threat* that the plaintiff *will be wronged again*." *Murfitt v. Bank of Am. NA*, EDCV 13-
9 01182 JGB, 2013 WL 7098636, *8 (C.D. Cal. Oct. 22, 2013) (citing *City of Los Angeles v. Lyons*,
10 461 U.S. 95, 111 (1983) (emphasis supplied)). Although Plaintiff has posited that Defendants have
11 perpetrated, essentially, a pattern and practice of holding themselves out as ECOA-covered and
12 failing to comply with the ECOA, the complaint lacks any allegation that can support a finding that
13 there is any immediate threat that Plaintiff continues to be or will be wronged again, or any basis
14 for the Court's finding that this requirement is met. Accordingly, Defendant's motion on this
15 ground is granted with leave to amend.

16 Finally, the Court notes that in Plaintiff's opposition to the motion, she indicates that she
17 does not seek actual damages for herself, and that this representation is at variance with a statement
18 in her complaint. Accordingly, Plaintiff shall have leave to amend her complaint to reflect
19 accurately which damages she seeks.

20 For the reasons stated above, Defendant's Motion to Dismiss is **DENIED** in part. Plaintiff
21 shall have 30 days from the date of this Order to file an amended complaint.

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23 **IT IS SO ORDERED.**

24 Date: **September 15, 2014**

25 
26 YVONNE GONZALEZ ROGERS
27 UNITED STATES DISTRICT COURT JUDGE
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